



MILWAUKEE POLICE DEPARTMENT

STANDARD OPERATING PROCEDURE

120 – OPERATING WHILE INTOXICATED (OWI)

GENERAL ORDER: 2014-41
ISSUED: June 6, 2014

EFFECTIVE: June 6, 2014

REVIEWED/APPROVED BY:
Captain Regina Howard
DATE: May 9, 2014

ACTION: Amends General Order 2012-16 (June 1, 2012)

WILEAG STANDARD(S): 6.2.6

120.00 PURPOSE / POLICY

The following sections were written to guide officers in the requirements and procedures relating to the arrest and testing of a subject for operating or driving a motor vehicle while under the influence of an alcoholic beverage, a controlled substance, other drugs, or a combination of such. These procedures are a direct result of city ordinances, state statutes, city and state policies, and the policies of local medical facilities.

For the completion of reports related to an operating while intoxicated (OWI) arrest, the city attorney's office requests that officers refrain from using any correction fluid or tape as it can lead to questions of altered documents, and the time at which the corrections were completed.

Note: The TraCS system can be used for filing not only crash reports, but the majority of OWI related reports. Members have the option of filing the traditional paper forms or by using TraCS to complete OWI related reports. See the Badger TraCs Traffic and Criminal software guide found on the intranet for all TraCS related procedures.

120.05 DEFINITION OF TERMS

A. BAC

Breath or blood alcohol concentration or prohibited breath or blood alcohol concentration.

B. BODILY HARM

Physical pain or injury, illness, or any impairment of physical condition.

C. CONTROLLED SUBSTANCE

A drug, substance or immediate precursor included in schedules I to V under Wis. Stat § 961.

D. CONTROLLED SUBSTANCE ANALOG

A substance where the chemical structure is substantially similar to the chemical

structure of a controlled substance included in schedule I or II.

E. DRUG

Any substance, that when taken into the human body, can impair the ability of the person to operate a vehicle safely.

F. FIELD SOBRIETY TESTS

Simple physical or cognitive tests administered by law enforcement designed to determine if an individual is operating under the influence.

G. FORCED OR FORCIBLE BLOOD DRAW

The taking of a one's blood against his/her will. For the purposes of this SOP, this definition does not include situations where law enforcement must use physical force to obtain a blood sample from a physically resistant subject. Refer to section 120.55 for the procedure when physical force is necessary to obtain a blood sample.

H. GREAT BODILY HARM

Bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

I. IMPLIED CONSENT LAW

Any person who drives or operates a motor vehicle upon the public highways of this state, or in those areas enumerated in Wis. Stat. § 346.61, is deemed to have given consent to one or more tests of his or her breath, blood, or urine, for the purpose of determining the presence or quantity in his or her blood or breath of alcohol, controlled substances, controlled substance analogs or other drugs or any combination of alcohol, controlled substances, controlled substance analogs, and other drugs, when requested to do so by a law enforcement officer or when required to do so under Wis. Stat. § 343.305(3). The law specifies that: (1) any such tests must be administered upon the request of a law enforcement officer; and (2) the law enforcement agency by which the officer is employed must be prepared to administer, either at its agency or any other agency or facility, two of the three tests (breath, blood, or urine) and may designate which of the tests shall be administered first.

J. INFORMING THE ACCUSED

The name of the form used to inform the arrested subject of Wisconsin's Implied Consent Law.

K. INJURY

Damage to the human body that is the result of some acute exposure to harm that is

classified as bodily harm, substantial bodily harm or great bodily harm but does not result in death.

L. INTOXICANT

Any alcohol beverage, controlled substance, controlled substance analog or other drug or any combination thereof.

M. RESTRICTED CONTROLLED SUBSTANCE

Any controlled substance in schedule I under Wis. Stat. § 961 other than tetrahydrocannabinol, any controlled substance analog of a controlled substance in schedule I, delta-9-tetrahydrocannabinol, methamphetamine, and cocaine or any metabolites of cocaine.

N. STANDARDIZED FIELD SOBRIETY TESTS (SFST)

Standardized field sobriety tests are a battery of three tests that were developed as a result of research sponsored by the National Highway Traffic Safety Administration (NHTSA) and conducted by the Southern California Research Institute, administered and evaluated in a standardized and systematic manner to obtain validated indicators of impairment and establish probable cause for arrest through a formal program of training that certifies officers as practitioners.

O. SUBSTANTIAL BODILY HARM

Bodily injury that causes a laceration that requires stitches, staples, or a tissue adhesive; any fracture of a bone; a broken nose; a burn; a petechia; a temporary loss of consciousness, sight or hearing; a concussion; or a loss or fracture of a tooth.

P. OWI

Operating while intoxicated or operating while under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, a controlled substance and a controlled substance analog, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving.

Q. UNDER THE INFLUENCE

A person has consumed a sufficient amount of alcohol or a drug to be less able to exercise clear judgment and steady hand necessary to handle and control a motor vehicle.

120.10 ARREST PROCEDURES (WILEAG 6.2.6)

A. QUICK REFERENCE GUIDE FOR ANY OWI VIOLATION

- Make contact with the driver.
- Issue field sobriety tests if possible.
- Arrest the subject.
- Determine the type of violation by:
 - Checking for injuries;
 - Checking for minor passengers under the age of 16;
 - Checking DOT record for prior convictions.
- Choose the primary test.
- Issue the primary test.
- Process the prisoner.
- File the appropriate reports.

B. Since there are multiple types of OWI and OWI related violations, if an officer has circumstances or evidence that would lead him or her to believe that a subject was operating or driving a motor vehicle while under the influence of an intoxicant (alcohol, controlled substance, other drug, or a combination), he/she should proceed in the following order each and every time, regardless of the type of violation being investigated.

1. Conduct field sobriety tests or standardized field sobriety tests (SFSTs) if he/she is a certified practitioner, to determine if there is impairment. Certain situations may prevent the officer from being able to issue field sobriety tests; however, if there is probable cause to believe the subject is impaired, the subject shall be arrested.
(WILEAG 6.2.6.1)
2. Determine the type of violation prior to leaving the scene because the type of violation will determine what the primary chemical test will be. Determine the type of OWI violation by checking for the following in the order listed:
 - a. Check for injuries at the scene.
 - b. Check for passengers in the vehicle under the age of 16 years old.
 - c. Check the person's driving record for prior OWI related convictions.
3. Choose the primary chemical test based on the type of violation and issue that test.
(WILEAG 6.2.6.3)
4. After the chemical test has been issued, process the prisoner and complete the appropriate reports.

C. If the circumstances will not allow the field sobriety tests to be performed on the scene, the tests can be conducted within a controlled/secure area near the stop (e.g., gas station, store parking lot, or district station - if the circumstances warrant the location change). If the subject is conveyed to another location for the purposes of conducting field sobriety tests, the officer must inform the subject of the reason for the location change. The officer must also document the location change and reason in the reports. Circumstances that could hinder the effectiveness or validity of the tests

on the scene would be, but are not limited to the following:

1. A resistive, combative, or uncooperative subject;
2. A subject that has physical limitations (e.g., handicap limits or injury);
3. Weather conditions (e.g., rain, snow, wind);
4. Road conditions (e.g., under construction, on a hill);
5. Public conditions (e.g., crowds, hostile neighbors or relatives);
6. Light conditions (e.g., street lights - out, weak, or none).

If conveyed to another location for the purpose of field sobriety tests, the suspect must be informed that they are not under arrest. The investigating officer is merely continuing the investigation into a possible impaired driving offense.
(WILEAG 6.2.6.1 and 6.2.6.2)

- D. If the tests are performed at a location other than the scene, or no tests are conducted at all, then this must be noted in the *OWI Memorandum* (form PO-20), along with the reasons. The conducting of SFSTs is not currently required under Wisconsin state law, but is useful in determining probable cause for further chemical testing, and is recommended for effective prosecution.
(WILEAG 6.2.6.1)

- E. The types of OWI violations are as follows:

Absolute Sobriety – Forfeiture

Absolute Sobriety – Misdemeanor (if passenger is under age 16)

1st Offense – Forfeiture

2nd Offense – Misdemeanor

3rd Offense – Misdemeanor

4th Offense – Misdemeanor (no priors within the last 5 years)

4th Offense – Felony (at least one prior within the past 5 years)

5th & Subsequent Offenses – Felony

Injury OWI Cases – Misdemeanor
(Injury is not great bodily harm and has no passenger under 16,
and has no prior convictions)

Injury OWI Cases – Felony

(Injury is great bodily harm (or) injury is not great bodily harm, but has a passenger under 16 or has a prior conviction)

Homicide By Intoxicated Use OWI Cases – Felony

- F. Once the determination has been made to effect an arrest, the officer shall determine the type of violation by checking for injuries, checking for minor passengers in the vehicle under the age of 16, and checking the person's driving record for prior OWI related convictions (see sections 120.15, 120.20 and 120.25).
- G. Once the type of violation has been determined the officer shall choose the primary chemical test to be offered and issue that test. If the primary test will be breath the officer shall convey the subject to a district station for chemical testing. If the primary test will be blood the officer shall convey the subject to the closest hospital for chemical testing (see sections 120.30, 120.45 and 120.50).
(WILEAG 6.2.6.2 and 6.2.6.3)
- H. If applicable, the officer shall refer to SOP 610 – Towing of Vehicles to determine the correct procedure for towing the suspect's vehicle. If the vehicle is not needed for evidentiary purposes, the vehicle may be legally parked by the officer or turned over to a passenger or person at the scene that is willing to take responsibility for the vehicle if the registered owner gives consent for the vehicle to be removed from the scene by the responsible person. The officer shall ensure the responsible person has a valid operator's license, and their ability to operate the vehicle is not impaired by an intoxicant and/or drugs.
(WILEAG 6.2.6.5)
- I. Officers shall obtain the appropriate citation prior to performing any chemical tests, as a citation number is required for the set-up of the intoximeter EC/IR, and on the OWI reports. However, it is not required to give the defendant their copy prior to any testing. Officers shall complete an *Informing the Accused* and read it to the subject prior to obtaining any chemical tests (see section 120.35 and 120.40). Officers shall read the subject their constitutional rights per Miranda and conduct a custodial interview, but only after the chemical test evidence has been obtained and if the subject has waived their rights. Officers may use the standard questions listed on the *OWI Memorandum* (form PO-20), but are not limited to only those questions. As with any other incident related interrogation, the subject can choose not to answer any questions or stop at any time if they initially waived their rights. All interviews regarding felony OWI violations must be recorded. The officer shall then process the arrested subject and complete the appropriate reports, starting with the citations.
- J. All tickets related to the OWI shall be included in the OWI envelope (e.g., speeding, unregistered auto). Court dates and times for any citations issued in conjunction with the OWI case must be the same and complete the passenger under 16 portion of the uniform traffic citations.

Court Dates

City cases – use the next available court date at least 24 hours from the time of the

arrest, and when court is in session (no weekends or holidays). Count 24 hours from the time of the violation and issue that date. If the next 1:30 PM court date lands on a Saturday or Sunday, make the court date for the following Monday. If it lands on a holiday, make the court date for the first day that court is back in session following the holiday.

State cases – next day, including weekends and holidays.

Hospital admissions – if a subject arrested for an OWI offense is hospitalized and going to be admitted for any period of time, the subject may be released from custody at the hospital and ordered to appear at either municipal court for city violations or circuit court for state violations. Issue the appropriate citation with a future court date using the standard traffic court schedule for 1:30 PM.

Court Times

All OWI violations are 1:30 PM.

Court Location

City cases – Municipal Court – 951 N. James Lovell St., Milwaukee, WI 53233

State cases – Circuit Court – 821 W. State St., Room 221 Milwaukee, WI 53233

120.15 CAUSING INJURY VIOLATIONS

- A. The injury must be to another person, other than the individual being charged. A person cannot be charged with a causing injury violation if the only injury is to themselves. If the only person injured is the suspect, process the case as a basic OWI, based on the number of previous convictions. If anyone other than the suspect is also injured, process the case as an injury OWI, regardless of the number of previous convictions. The injury of another subject is a state violation regardless of whether or not it is his/her first violation. For the definition of causing an injury, the same guidelines are followed as those for filing an accident report, in that the injury can be claimed or visible. Medical attention or treatment is advised for the proof of an injury, but is not required, except in the cases of causing great bodily harm.

Misdemeanor:

- B. Misdemeanor, if the injury does not reach the level of great bodily harm, and they have no prior OWI convictions and there were no passengers under the age of 16 in the vehicle. Process the case as Causing Injury By OWI [Wis. Stat. § 346.63(2)(a)1], even if the injury is not visible and is only claimed by the victim (a claim of injury is an injury).

Felony:

- C. 1. Felony, if the injury is great bodily harm. Process the case as Causing Injury By Intoxicated Use Of A Vehicle [Wis. Stat. § 940.25(1)(a)].

2. Felony, if the injury is not great bodily harm but the driver has a prior OWI conviction. Process the case as Causing Injury By OWI [Wis. Stat. § 346.63(2)(a)1], but make it a felony.
3. Felony, if the injury is not great bodily harm but the driver has a passenger under the age of 16 years old in the vehicle. Process the case as Causing Injury By OWI [Wis. Stat. § 346.63(2)(a)1], but make it a felony.

Note: All injury OWI cases are “officer to court”. Sometimes the injury OWI is amended to a basic OWI offense by the district attorney so be prepared to issue a new citation at the DA’s office for the amended charge.

- D. If a subject has been arrested for an OWI offense in which another subject has been injured as a result, this incident must be handled under the correct statute. Do not issue a citation for OWI [Wis. Stat. § 346.63(1)(a)] for cases that involved injury to another person. Citations shall be issued for the violations of Wis. Stat. § 940.25 and 940.09 - for the purpose of a DOT entry. Examples of the injury related statutes are as follows:
1. Wis. Stat. § 346.63(2)(a)(1) Causing injury by operation of a motor vehicle while under the influence of intoxicant, controlled substance, or combination of both.
 2. Wis. Stat. § 346.63(6)(a) Causing injury by operating commercial vehicle with an alcohol concentration of .04 or more, but less than .08.
 3. Wis. Stat. § 940.25(1)(a) Causing great bodily harm to another human by intoxicated use of a vehicle.
 4. Wis. Stat. § 940.09(1)(a) Homicide by intoxicated use of a vehicle.
- E. An incident number must be obtained and an incident report must be filed only for violations of Wis. Stat. § 940.25 (great bodily harm) & Wis. Stat. § 940.09 (homicide). All other OWI violations, including felonies, do not require an incident number or report to be filed.
- F. Photos must be taken documenting all injuries and damage to any vehicles or property, as injury OWI cases are criminal offenses. All photos taken must be provided to the district attorney reviewing the charges and placed on evidentiary inventory.
- G. When processing causing injury (great bodily harm) or Homicide by Intoxicated Use of a Vehicle, the arresting officer shall not attempt to Mirandize or ask questions of the suspect. The respective Geographic Investigations Division or Metropolitan Investigations Division personnel assigned to the case will handle this portion of the investigation.
- H. If the DA’s office pended the case until the analysis sheet is received listing the results of the blood test, request that the assistant DA reviewing the case sign the *Arrest Detention Report* and release the defendant to appear in 30 days. When there is an

OAR case along with the OWI charge, list both cases on the same criminal complaint.

120.20 PASSENGERS UNDER THE AGE OF 16

- A. The presence of a child passenger under the age of 16 in a vehicle is a penalty enhancer. If there is a child under the age of 16 in the subject's vehicle at the time of the offense, use the following format as a guide to determine the type of violation (e.g., the violation would have been ? but the presence of a child under 16 elevated the offense to ?).

Absolute Sobriety – Misdemeanor criminal violation

1st Offense OWI – Misdemeanor criminal violation

2nd Offense OWI – No penalty enhancer. Use current bond amounts.

3rd and subsequent OWI – the violation becomes a felony

- Primary test will be blood.

Misdemeanor Causing Injury By OWI [Wis. Stat. § 346.63(2)(a)1], – the violation becomes a felony

- Primary test will be blood.

- Case is “officer to court.”

- B. The officer must document the child's full name, date of birth, address, and specifically how the child was identified in the *OWI Memorandum* (form PO-20) report.

120.25 COUNTING PRIOR CONVICTIONS

- A. In order for an OWI offense to be counted, as a conviction, it must be listed with DOT as a conviction on the subject's driving record. Convictions are counted from the date of the offense, not the date of conviction. The date of the offense is the first date listed. The second date is the date of the conviction. If there is an offense date listed but no date of conviction shown, the offense is still pending in court and is not to be counted as a conviction for the purpose of determining the OWI offense, but must be counted for determining the primary chemical test that will be issued under implied consent (see section 120.30).

- B. The following is a list of DOT abbreviations that count as prior OWI convictions.

OWI	Operating While Intoxicated
BAC	Blood/Breath Alcohol Concentration
PAC	Prohibited Alcohol Concentration
IC	Implied Consent
OII	Operating While Intoxicated Causing Injury
CAD	Commercial Alcohol Causing Death
CAH	Commercial Alcohol Causing Great Bodily Harm

CAI	Commercial Alcohol Causing Injury
CBH	Commercial OWI Causing Great Bodily Harm
CCF	Commercial Controlled Substance Felony
CCS	Commercial OWI Controlled Substance
CHI	Commercial Negligent Homicide Intoxicated
CIC	Commercial Implied Consent
CII	Commercial OWI Causing Injury
CWI	Commercial Operating While Intoxicated
HAD	Hazard Commercial Alcohol Causing Death
HAH	Hazard Commercial Alcohol Causing Great Bodily Harm
HBH	Hazard Commercial OWI Causing Great Bodily Harm
HCA	Hazard Commercial Alcohol
HCS	Hazard Commercial OWI - Controlled Substance
HIC	Hazard Commercial Implied Consent
HII	Hazard Commercial OWI Causing Injury
HHI	Hazard Commercial Negligent Homicide Intoxicated
HWI	Hazard Commercial Operating While Intoxicated

- C. IC is the DOT abbreviation for implied consent; a conviction for IC is counted as a prior conviction. If this is observed on a DOT record, it means that the subject refused the chemical test under implied consent for that OWI arrest. Do not count an OWI and an IC conviction, which stem from the same offense, as two prior convictions. All offenses that result in a conviction from the same incident are only counted as one prior conviction. The officer must check the date of the violation to determine if the violations stem from the same incident.

Example: If a subject was arrested for OWI and then refused the chemical test, a conviction for both OWI and IC may appear on DOT record. If the date of the violation is the same it means they all stem from the same offense and are therefore only counted as one previous conviction.

Do not count incidents that were “vacated” (VAC) or “court released” (CR) as a previous conviction. If the current case involved causing injury, great bodily harm, or death it cannot be considered a city case, regardless if the subject has no prior convictions.

- D. If there are no prior OWI convictions within the last 10 years, the violation is charged as a 1st offense city OWI.
- If there are no convictions on the record – charge 1st offense.
 - If there is only one conviction listed on the record, determine whether if it was within the last 10 years.
 - If it was within the last 10 years – charge 2nd offense.
 - If it was older than 10 years – charge 1st offense.
- E. If there are two or more convictions anywhere on the record, the 10-year rule does not apply. Count the number of convictions listed and issue the appropriate citation for the state OWI.

F. If there are three convictions on the record – charge 4th offense, but determine whether the person has a prior conviction within the last 5 years.

- If there is a conviction within the last 5 years – charge 4th offense.
(Felony)
- If there is no conviction within the last 5 years – charge 4th offense.
(Misdemeanor)

Note: Out-of-state convictions are to be counted if they are listed on the teletype from DOT. The state of WI has reciprocal agreements with several states that include the reporting of violations such as OWI.

120.30 PRIMARY CHEMICAL TESTS (WILEAG 6.2.6)

A. The primary chemical test for the MPD is the breath test for first offense, second offense, and absolute sobriety cases only, but only if drugs are not suspected. A blood test becomes the primary test if drugs are suspected, and blood testing is the primary test for all other OWI offenses. A urine test is only admissible as evidence when the bladder is voided before the test sample is obtained, which translates into a waiting time. Under certain circumstances, urine tests may be required by a drug recognition expert (DRE), but shall never be the primary test.

Absolute Sobriety – Breath

1st offense – Breath

2nd offense – Breath

3rd offense – Blood

4th offense – Blood

5th & subsequent offenses – Blood

Injury OWI Cases – Blood

Homicide By Intoxicated Use OWI Cases – Blood

All felony OWI Cases – Blood (For 3rd and subsequent OWI offenses, the presence of a minor passenger under the age of 16 elevates the current offense to a felony).

If the subject has any pending OWI cases or warrants for OWI, which would make the current offense a 3rd offense or higher – Blood.
(WILEAG 6.2.6.3)

B. If a subject refuses the primary test for any criminal OWI offense, a search warrant shall be obtained and blood shall be drawn. The subject should still be charged with the refusal regardless of the fact that a sample was taken pursuant to the search warrant.

(WILEAG 6.2.6.3)

- C. When the use of physical force will be required to obtain the blood sample, refer to section 120.55. When the use of a search warrant will be required to obtain the blood sample, refer to section 120.75.

Note: It is recommended that all tests be conducted within three (3) hours from the time of the incident for operating or driving a motor vehicle while intoxicated. If the three hour time limit has expired, the city attorney and DA requests that the blood sample still be drawn as they can produce expert testimony which will establish the subject's alcoholic content at the time of the operating/driving of a motor vehicle. When drugs are suspected for drug impaired driving offenses, time becomes more critical and blood should be obtained as soon as possible because many drugs are metabolized and eliminated from the blood quicker than alcohol.

120.35 IMPLIED CONSENT & INFORMING THE ACCUSED (WILEAG 6.2.6)

- A. Prior to obtaining any chemical test evidence, law enforcement officers are required to read Wisconsin's Implied Consent Law to the subject per Wis. Stat. § 343.305(4), and must make a reasonable effort to convey the information to the arrested subject in a language that he/she understands if the subject does not speak English. The *Informing the Accused* is the name of the form used to read Wisconsin's Implied Consent Law to the subject. This should be completed by the arresting officer, but can be completed by the intoximeter operator. Give the subject the pink copy of the *Informing the Accused* immediately upon form completion. Officers shall read the *Informing the Accused* to a subject under any of the following circumstances:
1. If the subject was arrested for any OWI offense.
 2. If the subject was suspected of driving or being on duty time with respect to a commercial motor vehicle.
 3. If the subject was the operator of a vehicle that was involved in an accident that caused the death of, great bodily harm to, or substantial bodily harm to a person when the key elements of Wis. Stat. § 343.305(3)(ar)1 or Wis. Stat. § 343.305(3)(ar)2 are met (enumerated in 120.35(F)).
- B. If the subject consented and submitted to the primary test of the MPD, and then requests the alternate test, he or she shall be conveyed to a district station for a breath test or the nearest hospital for a blood test. If breath was the primary test, blood becomes the alternate test. If blood was the primary test, a breath test becomes the alternate test (a urine test shall not be offered as an alternative test). If the subject refuses the alternate test that the MPD offers, then there is no longer an obligation to accommodate future requests for an alternate test. Urine tests should not be offered as a primary or an alternate test.

(WILEAG 6.2.6.2, 6.2.6.3)

Note: If the primary test is refused, no alternate test is conducted.

- C. In the event a second test is required (e.g., switching the primary test from breath to blood), a new *Informing the Accused* must be completed and re-read to the subject.
(WILEAG 6.2.6.3)

Note: An arrested subject is not entitled to consult with counsel prior to the administration of the primary chemical test. Counsel may be contacted once the selected test has been completed or the test has been documented as refused.

- D. When an investigation of an OWI related offense involves an incapacitated subject, the arresting officer(s) must notify the shift commander of the circumstances and complete the reports with whatever information is available. A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under Wis. Stat. § 343.305(3)(b), and if a law enforcement officer has probable cause to believe that the person has violated Wis. Stat. § 346.63(1), (2m) or (5) or local ordinance that conforms to the statute, or Wis. Stat. § 346.63(2) or (6) or Wis. Stat. § 940.25 or Wis. Stat. § 940.09 where the offense involves the use of a vehicle, one or more samples (tests) may be administered to the person. However, the arresting officer(s) must read the *Informing the Accused* to the subject regardless of his/her state of consciousness. If the subject remains unconscious or otherwise not capable of understanding the information, do not give the subject their copies of the forms or citations since the hospital nor the medical staffs are legally responsible for giving them to the subject upon his/her discharge. The copies must be retained by the arresting officer(s) and given to the subject personally at a later time or date. If the subject will not be conscious or available beyond a reasonable amount of time, the copies can be left at his/her residence with a relative. Ensure that the method of delivery and the person who received the copies, if other than the subject, is noted on the reports and citations.
(WILEAG 6.2.6.3)

- E. Any person who drives or operates a motor vehicle upon the public highways of this state, or in those areas enumerated in Wis. Stat. § 346.61, is deemed to have given consent to one or more tests of his/her breath, blood, or urine for the purpose of determining the presence or quantity of alcohol, controlled substances, a combination of alcohol and controlled substances, other drugs, or a combination of alcohol and other drugs when requested to do so by a law enforcement officer under sub. (3)(a) or when required to do so under (3)(b). Any such tests shall be administered upon request of a law enforcement officer. The law enforcement agency by which the officer is employed shall be prepared to administer, either at its agency or any other agency or facility, two of the three tests under sub. (3)(a), and may designate which of the tests shall be administered first.

(WILEAG 6.2.6.3)

- F. 2009 Act 163 gives police greater authority in requesting breath, blood or urine samples in cases where a crash is involved.

1. 343.305(3)(ar)1 states, "If a person is the operator of a vehicle that is involved in an accident that causes substantial bodily harm, as defined in Wis. Stat. § 939.22(38), to any person, and a law enforcement officer detects any presence of

alcohol, a controlled substance, a controlled substance analog or other drug, or a combination thereof, the law enforcement officer may request the operator to provide one or more samples of his or her breath, blood, or urine.”

2. 343.305(3)(ar)2 states, “If a person is the operator of a vehicle that is involved in an accident that causes the death of or great bodily harm to any person and the law enforcement officer has reason to believe that the person violated any state or local traffic law, the officer may request the operator to provide one or more samples of his or her breath, blood, or urine.”

120.40 IMPLIED CONSENT FOR CERTAIN MOTOR VEHICLE CRASHES (WILEAG 6.2.6)

- A. Proceeding with all crash investigations involving death or injuries will depend on the type of injury sustained. Officers shall conduct thorough accident investigations, which include looking for signs of impairment. Anytime there is reasonable suspicion to believe that the subject is under the influence of alcohol or drugs, field sobriety tests shall be issued to determine if there is impairment that would help establish probable cause to arrest. If the subject was injured and unable to perform field sobriety tests, probable cause to arrest may still exist based on the totality of the circumstances, but must be determined on a case-by-case basis.

Probable Cause

- B. Any crash where there is probable cause to arrest for an OWI violation, proceed with the proper procedures for the appropriate OWI charge, based on the type of injury.

No Probable Cause

- C. 1. If the crash results in an injury that rises to the level of “substantial bodily harm” and there is no probable cause to arrest, but the officer detects any presence of alcohol or drug use, proceed with implied consent (read *Informing the Accused*) and request a blood sample.

939.22(38) “Substantial bodily harm” means bodily injury that causes a laceration that requires stitches, staples, or a tissue adhesive; any fracture of a bone; a broken nose; a burn; a petechia; a temporary loss of consciousness, sight or hearing; a concussion; or a loss or fracture of a tooth.

2. If the crash results in either death or an injury that rises to the level of “great bodily harm” and there is no probable cause to arrest, but the driver violated a traffic law, proceed with implied consent (read *Informing the Accused*) and request a blood sample. The traffic law that was violated should be some type of moving violation and not simply an equipment or registration violation.

939.22(14) “Great bodily harm” means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

- D. Under these circumstances, a person who is not arrested for OWI should first be asked if they would consent to an evidentiary chemical test. If they consent, have the blood drawn and place it on inventory. If the driver does not give consent, the officer would then read the *Informing the Accused* and would again ask the driver to submit to a chemical test. If they consent, have the blood drawn and place it on inventory. If the operator still refuses to submit to the chemical test, complete the appropriate *Notice of Intent to Revoke* and *Notice of Hearing* reports and give the subject a copy.

A forced blood draw may be obtained only if a search warrant has been issued. The decision to apply for a search warrant in these instances shall be determined on a case-by-case basis. The probable cause necessary to obtain a search warrant under these circumstances is different than it is for operating under the influence incidents. An application for a search warrant under these circumstances must demonstrate probable cause by articulating the appropriate sub-statutes found in Wis. Stat. § 343.305 along with any applicable annotated statutes that would apply to the particular circumstances of the case. The duty district attorney may be contacted for guidance during the preparation of the affidavit and search warrant at (414) 659-3694.
(WILEAG 6.2.6.3)

- E. Unless there are additional charges, (e.g., obstructing, disorderly conduct, outstanding warrants), the subject may be released from the hospital and should not be booked at a district station. The *Failure to Submit to Implied Consent* (refusal) is an administrative action punishable only by licensure sanctions and is not a crime or forfeiture. No citation exists for this offense so none shall be issued. In addition, if the subject were to be conveyed to a district station to be booked for other charges, the refusal shall not be entered as a charge on any *Arrest and Detention Report* (form PA-45).
- F. If there is no citation number or no incident report number, use the crash report number on the inventory report when submitting the blood.

120.45 BREATH TESTS (WILEAG 6.2.6)

- A. A twenty (20) minute period of continuous observation must be conducted of the subject immediately preceding the breath test. The observation period must be conducted by the arresting officer or the intoximeter operator. The intoximeter operator, however, would be the most effective as they are trained and can present the best judicial testimony in knowing what to look for and what may invalidate such tests. The arresting officer(s) could be an additional witness.
- B. An arresting officer can also be the intoximeter operator for the breath test, but if he or she is a one-person squad, it is recommended that an additional officer witness the observation period and the testing of the subject. This is recommended to further substantiate the subject's condition and witness the procedures of the chemical testing.
- C. If the subject provides two adequate samples of their breath and the results of the test indicate a prohibited alcohol concentration, the officer must issue the proper BAC citation for operating a motor vehicle with a prohibited alcohol concentration and

complete the *Notice of Intent to Suspend/Temporary Driving Permit* (form MV3519), and give the pink copy to the subject. In addition, the officer must also provide the subject with the *Administrative Review Request* (form MV3530) yellow copy. Please see the most recent version of the MPD traffic deposit cards to determine the appropriate BAC charge based upon the previous number of convictions.

Note: Law enforcement no longer has the authority to confiscate the driver's license of an offender for refusing to test or when they have tested with an illegal BAC. This responsibility has now been transferred to the courts.

- D. If the subject consents to a chemical test of their breath, the test must be conducted by a certified operator of the intoximeter EC/IR. The intoximeter EC/IR is the only breath test device used by the MPD for evidence in city or state cases. If the subject refuses to submit to a breath test, the operator must still set up the intoximeter for the test, and allow it to proceed through the process until it is ready to accept a sample. At this point, the intoximeter operator will select the option of "refusal." The test will then end and subsequently print copies of the test results. The arresting officer(s) should then proceed with the requirements for a refusal. If the OWI violation is a criminal offense the officer shall obtain a search warrant and the subject shall be conveyed to a hospital for a forced blood draw. A second *Informing the Accused* must be read prior to obtaining the blood. If the subject consents to the blood test it is still processed as a refusal based on the refusal to take the breath test. If the subject had refused the breath test and still refuses the blood test, blood shall be obtained forcibly after a search warrant has been obtained, but only for OWI violations that are misdemeanor or felony crimes.
- E. If the subject submits to a breath test, which results in an alcohol concentration level of below .08, and his/her actions and appearances are not consistent with the tested level of intoxication, the primary test should be changed. Convey the subject to a hospital for a blood test. This would be done for the purpose of determining the presence or quantity of a controlled substance or other drug. If a second test is conducted, a new *Informing the Accused* must be completed and re-read to the subject. Make sure to include both reports with the completed OWI package and list the explanation and information on the *OWI Memorandum* (form PO-20) If the subject refuses to submit to the second test, immediately follow the procedures for refusal (section 120.70), and if the OWI violation is a criminal offense, blood shall be obtained forcibly pursuant to obtaining a search warrant.

Note: If the subject's impairment level is not consistent with a low BAC reading, causing the officer to suspect other drug use, the officer must notify his/her shift commander, prior to requesting a second test, and request that a drug recognition expert (DRE) respond to the district station - if available. If possible, two DRE officers shall be utilized for each evaluation.

- F. If the subject breathes into the intoximeter and successfully provides the first sample, but refuses to provide the second sample, the operator must select the refusal option. The arresting officer(s) must then process this as a refusal and if the OWI violation is a criminal offense, convey the subject to a hospital for a forced blood draw pursuant to

obtaining a search warrant.

- G. If the subject cannot properly provide a sufficient sample due to a medical condition, the primary test should be changed from breath to blood. Various medical conditions such as upper respiratory disorders and/or old age could limit or hinder a subject's ability to provide a sufficient sample. The arresting officer(s) or the intoximeter operator should attempt to identify these circumstances prior to the set-up of the intoximeter EC/IR. The secondary test for the MPD is blood. The request for the blood test can be made at the district station or Central Booking. If the subject consents to the blood test, he/she shall be conveyed to the nearest hospital emergency room and have a blood sample drawn. This would be conducted at the expense of the MPD. If the subject refuses to submit to the blood test, he/she should then be processed as a refusal and if the OWI violation is a criminal offense, conveyed to the hospital for a forced blood draw pursuant to obtaining a search warrant. Officers should not make a medical determination for the subject that claims that he or she cannot provide a sufficient sample. When in doubt, request a blood test.

(WILEAG 6.2.6.3)

Note: It is recommended that all tests be conducted within a three (3) hour limit from the time of the incident of operating or driving a motor vehicle while intoxicated. If the three hour time limit has expired, the city attorney and district attorney (DA) requests that the breath sample still be obtained as they can produce expert testimony which will establish the subject's alcohol content at the time of the operating or driving of a motor vehicle. When drugs are suspected for drug impaired driving offenses, time becomes more critical and blood should be obtained as soon as possible because many drugs are metabolized and eliminated from the blood quicker than alcohol.

120.50 BLOOD TESTS (WILEAG 6.2.6)

- A. Blood may be drawn from the subject arrested for an OWI offense, in accordance with Wis. Stat. § 346.63 (1), 346.63 (2m), or 350.10(3). The blood test would be conducted to determine the presence or quantity of alcohol, controlled substance, any other drug, or a combination of such. Only a physician, registered nurse, medical technologist, a physician's assistant, phlebotomist, other medical professional who is authorized to draw blood, or a person acting under the direction of a physician may draw the blood sample.
- B. Liaison is maintained with the State Lab of Hygiene (Madison, WI), WI Crime Lab (Milwaukee, WI), Property Control Section, and the court liaison officer to facilitate transmitting of blood samples and reception of chemical analysis results. Blood samples for first, second and third offense OWI cases will be sent to the State Lab of Hygiene. Blood samples for all other OWI violations will be sent to WI Crime Lab. Blood alcohol results are received from the State Lab of Hygiene via U.S. mail and could take up to 30 days. Alcohol/drug combinations or drug only results will take longer to process. A person, the employer of any such person, and any hospital where the blood sample was drawn by any such person has immunity from civil or criminal liability under Wis. Stat. § 895.53.

C. CIRCUMSTANCES REQUIRING BLOOD TEST

1. If a subject is willing, but unable to properly breathe into the intoximeter to provide a sufficient sample of their breath.
2. If a subject's breath test is low and not consistent with the apparent level of intoxication/impairment.
3. If an intoxicated subject sustained an injury and is treated and/or admitted at a hospital.
4. If the subject displays a level of intoxication that would not allow him or her to provide a sufficient sample of his or her breath.
5. If there is probable cause to believe that a controlled substance was involved.
6. If there is probable cause to believe that another drug, such as medication, was involved.
7. If the subject successfully submitted to a breath test and reasonably requests an alternate test.
8. State cases that are the 3rd offense or higher blood shall be drawn as the primary test.
9. Offenses that involve injury, great bodily harm, or death to another person (subjects are not charged with causing injury to themselves).
10. Under implied consent for certain motor vehicle crashes (regardless of who was injured).
11. Forced blood draws are required upon the refusal to submit to any chemical test under Implied Consent for all OWI violations that are misdemeanor or felony crimes, pursuant to obtaining a search warrant.
12. Blood shall be drawn in all felony cases.

D. PROCEDURES FOR CONDUCTING A BLOOD TEST

1. The subject shall be placed under arrest for the appropriate charge and informed of the arrest.
2. The arresting officer shall notify the shift commander and provide him/her with the details of the arrest.
3. The subject shall be conveyed to the nearest hospital for testing, with a state of WI Blood Test Kit. Officers shall ensure that the kit has not expired by checking the date, which is stamped on the outside of the kit.

4. The hospital shall be informed that the blood sample being drawn is for evidentiary purposes, and the MPD will pay the expenses.
5. The officer must read the *Informing the Accused* to the subject, request that they submit to the chemical test of their blood, and give him/her the copy (pink copy). This shall be done even if the subject is unconscious.

Note: The twenty (20) minute observation period is not required for blood tests.

6. The officer must issue the appropriate OWI related citation.
7. The officer shall provide the medical person drawing the blood sample with the kit, observe the blood draw process, and collect the samples. Officers must make sure that they obtain the name, title, and work address of the medical person who collected the blood sample.
8. The blood sample shall be conveyed to any district station and placed on inventory as evidence and secured in the district evidence locker with no refrigeration. No MPD gun tags or seal numbers are to be used.
9. A *Property Inventory Report* shall be completed and copies shall be made for the *OWI Package*. The original *Property Inventory Report* shall be given to the district property officer or the person who received the sample. For districts utilizing the "Ace-Officer Drop" system, follow established protocol. Officers must list the specific OWI violation in the "charge" portion of the *Property Inventory Report* (e.g., OWI first, second, third, causing injury) This is done to assist the Property Control Section so the blood can be sent to the proper location for testing (State Lab of Hygiene (Madison, WI), or the WI Crime Lab (Milwaukee, WI)).
10. The agency address for the *Blood/Urine Analysis Form* contained within the blood kit **REDACTED**

REDACTED

11. The name of the person that drew the blood shall be placed on the *DA's Witness Sheet*.
12. The *OWI Package* shall be completed and submitted to the shift commander for review.
(WILEAG 6.2.6.3)

Note: It is recommended that all tests be conducted within three (3) hours from the time of the incident for operating or driving a motor vehicle while intoxicated. If the three hour time limit has expired, the city

attorney and DA requests that the blood sample still be drawn as they can produce expert testimony which will establish the subject's alcoholic content at the time of the operating / driving of a motor vehicle. When drugs are suspected for drug impaired driving offenses, time becomes more critical and blood should be obtained as soon as possible because many drugs are metabolized and eliminated from the blood quicker than alcohol.

120.55 FORCIBLE BLOOD DRAWS REQUIRING USE OF FORCE TO OBTAIN SAMPLE

- A. A law enforcement officer may use physical force to overcome physical resistance, subject to constitutional limitations, in order to draw a legally justified blood sample (Wis. Stat. § 343.305), however will only use the minimum physical restraint or force necessary to overcome the active resistance to draw the blood. The use of focused strikes, tasers, hard impact weapons, chemical irritants, or any other weapon to subdue the subject for the sole purpose of obtaining blood is prohibited.
- B. When a subject has threatened to physically resist or displays behavior indicating his/her desire to physically resist the blood draw process, the officer will immediately call for a supervisor to respond prior to physically restraining the subject to obtain blood evidence. A supervisor must be present during a forcible blood draw which requires police use of force.
- C. Absent any articulable exigent circumstances, the officer shall obtain a search warrant prior to conducting a forced blood draw. The warrant need not be in-hand or shown to the subject or the person drawing the blood prior to obtaining the sample. All that is required is that the officer has assurance that it was signed by a judge prior to proceeding. Since alcohol and drug blood evidence can rapidly deteriorate, an officer's request for assistance with a forced blood draw should be treated with urgency.
- D. To ensure the safety of the subject, hospital staff and the officers, a minimum of four (4) officers and one (1) supervisor will be present during a use of force blood draw, however based on the totality of the circumstances (e.g., subject already in restraints, lack of police resources, large number of hospital staff available), the number of officers may be reduced at the discretion of the supervisor on scene.
- E. Absent a hospital 4 point restraint system or other police department authorized restraint system, members will restrain physically resistant subjects to a hospital gurney by securing the subject's extremities by using handcuffs and leg irons. In addition to the restraints in use, on-scene officers will also secure each extremity to counter additional resistance in order to facilitate the blood draw.
- F. The on-scene supervisor should attempt to video record the blood draw utilizing one of the department's point and shoot cameras. The video recording of the blood draw, if one was made, will be kept as evidence according to current department protocol.
- G. When police use of force is required for a blood draw and a subject claims injury or is injured as a result of a blood draw, the on-scene supervisor must file an AIM use of force report in accordance with SOP 460 Use of Force. The AIM report must include

the circumstances of OWI arrest, why the subject was restrained and who restrained them (include the names of police members, hospital staff and any other witnesses), the method(s) used to overcome resistance and/or the type of restraints used, the documentation of any injuries to officers, hospital staff or the subject, and whether or not the blood draw was video recorded.

- H. If the subject physically resists efforts to obtain the blood sample, request an incident number and file an incident report with the state charge of Obstructing an Officer. If anyone is injured as a result of the subject's resisting, the subject should also be charged with the appropriate battery charge (e.g., Battery to a Police Officer, Battery to Hospital Care Provider).

120.60 URINE TESTS (WILEAG 6.2.6)

- A. Liaison is maintained with the State Lab of Hygiene, WI Crime Lab, PCS, and the court liaison officer to facilitate transmitting of urine samples and reception of chemical analysis results. Chemical analysis for city cases will be sent to the State Lab of Hygiene. Urine alcohol results are received from the State Lab of Hygiene via U.S. mail and could take up to 30 days. Alcohol/drug combinations or drug only results will take longer as they are sent to the WI Crime Lab and may require up to 6 months to process. Under certain circumstances, urine tests may be required by a drug recognition expert (DRE).
- B. PROCEDURES FOR CONDUCTING A URINE TEST
1. The subject shall be placed under arrest for the appropriate charge and informed of the arrest.
 2. The arresting officer shall notify the shift commander and provide him/her with the details of the arrest.
 3. The subject shall be conveyed to the district station for testing, with a state of WI Urine Test Kit. The subject should not be conveyed to a hospital for testing.
 4. The officer must read the *Informing the Accused* to the subject, request that they submit to the chemical test, and give him/her the copy (pink copy).
 5. The officer must issue the appropriate OWI related citation.
 6. Have the subject void (empty bladder) as soon as possible after the citation is issued. Approximately ½ hour later (not critical), collect the second specimen directly in the container provided and note the exact time for the official report. The officer collecting the sample must monitor the subject during collection to insure that there will be no claims of contamination, dilution with tap water, etc. Each urine kit has an instruction sheet. The officer must read and familiarize themselves with the procedure prior to collecting the sample.
 7. The urine sample shall be placed on inventory as evidence and secured in the district evidence locker with no refrigeration. No MPD gun tags or seal numbers

are to be used.

A *Property Inventory Report* shall be completed and copies shall be made for the *OWI Package*. The original *Property Inventory Report* shall be given to the district property officer or personnel who received the sample. For districts utilizing the "Ace-Officer Drop" system, follow established protocol.

8. The agency address for the *Blood/Urine Analysis Form* contained within the blood kit **REDACTED**

REDACTED

9. The *OWI Package* shall be completed and submitted to the shift commander for review.
(WILEAG 6.2.6.3)

120.65 PROHIBITED BLOOD ALCOHOL CONCENTRATION

- A. 2003 WI Act 30 details the graduated levels of the prohibited alcohol concentration and other provisions related to the conviction of a subject for OWI. The following are the current illegal limits for the prohibited alcohol concentration:

- | | | |
|---------------------------------------|---------------|---|
| 1. Zero, one or two prior convictions | .08 and above | (1 st , 2 nd & 3 rd offense) |
| 2. Three or more prior convictions | above .02 | (4 th offense & above) |
| 3. Commercial motor vehicles | .04 and above | |
| 4. ATV's, snowmobiles and boats | .08 and above | |
| 5. Aircraft with no passengers | .04 and above | |
| 6. Aircraft with passengers | above .00 | |
| 7. If subject to an IID | above .02 | |

Note: Above .02 is applicable for individuals who are required to have an ignition interlock device (IID), at all times, while under the duration of the order.

- B. Please refer to the most recent version of the MPD traffic deposit cards to determine the appropriate charge based upon the previous number of convictions.
- C. Exceptions to this statute, as permitted by 2003 Act 109, would be the counting of convictions for violations of Wis. Stat. § 940.25 and 940.09(1) whenever they occurred, including those

prior to January 1, 1989. Records of these violations are recoverable from the Department of Justice's criminal record database. These statutes include, but are not limited to, the following violations:

1. Wis. Stat. § 940.25(1)(a) Causing injury (great bodily harm) by intoxicated use of a vehicle.
2. Wis. Stat. § 940.25(1)(b) Causing injury (great bodily harm) by intoxicated use of vehicle with a prohibited BAC.
3. Wis. Stat. § 940.25(1)(bm) Causing injury (great bodily harm) while operating commercial vehicle w/ BAC of .04 or more, but less than .08.
4. Wis. Stat. § 940.09(1)(a) Homicide by intoxicated use of a vehicle.
5. Wis. Stat. § 940.09(1)(b) Homicide by intoxicated use of a vehicle with a prohibited BAC.
6. Wis. Stat. § 940.09(1)(bm) Causing death while operating commercial vehicle w/BAC of .04 or more, but less than .08.

Note: Law enforcement no longer has the authority to confiscate the driver's license of an offender for refusing to test or when they have tested with an illegal BAC. This responsibility has now been transferred to the courts.

120.70 REFUSALS

- A. A case is considered a "refusal" if the subject refused to submit to the primary chemical test of their breath, blood, or urine that was requested by the officer. Refusal to submit to implied consent will be in one of three forms.

1. Verbal –

A subject verbally stated that he/she would not submit to a chemical test.

2. Conduct –

State vs Rydeski, 214 Wis. 2d 101, (Ct. App. 1997) "a refusal to take the test need not be verbal. Conduct may serve as the basis." If the subject initially states that they will take the test but then does not comply, fails to approach the machine, insists on conditions such as, but not limited to, bathroom use, phone calls, or speaking to a supervisor first, or the subject's actions indicate that they do not intend on providing an adequate sample; sucking instead of blowing, sticking their tongue in the tube, blowing around the mouthpiece, pretending to blow but not really blowing, blowing too soft for the sample to be accepted, etc., it is still considered a refusal.

- An inability to submit to a breath test due to a physical defect or ailment shall

not be considered a refusal, but is a basis to change the primary test to blood.

- Failure of a subject to provide (two) separate, adequate breath samples in the proper sequence constitutes a refusal. If the person provides one breath sample and not the second, it is a refusal.

3. Right to Counsel (Requesting a lawyer) -

State vs Reitter, 227 Wis. 2d 213, 235 (1999) “a defendant who conditions submission to a chemical test upon the ability to confer with an attorney ‘refuses’ to take the test”. If a subject indicates that they will take the test but insists on speaking to an attorney first, the officer shall inform the subject that they are not entitled to counsel prior to the chemical test. If the subject continues to insist on speaking to an attorney first, the arresting officer(s) should then proceed with the requirements for a refusal. If the OWI violation is a criminal offense, a forced blood draw must be conducted pursuant to obtaining a search warrant. If the primary test offered was breath, a second *Informing the Accused* must be read prior to obtaining the blood. If the subject consents to the blood test, it is still processed as a refusal based on the refusal to take the breath test. If the subject had refused the breath test and still refuses the blood test, blood shall be obtained forcibly pursuant to obtaining a search warrant.

- B. The willingness of the subject to submit to a blood alcohol or breath alcohol test, following an earlier refusal, does not void or negate the refusal.
- C. If a subject refuses to submit to any primary chemical test, where the OWI violation is a misdemeanor or felony crime, blood shall be drawn pursuant to obtaining a search warrant. Refer to section 120.55 when the use of physical force is required to obtain the blood sample.
- D. If the hospital personnel refuse to draw a blood sample based on the subject's refusal, inform them that the blood samples must still be drawn pursuant to obtaining a search warrant and that they are required to comply. Under the court order, the officer can demand that the hospital personnel draw the sample. Hospital administrators have been advised by the DA's office, and have previously instructed their personnel to comply with such requests. If hospital personnel continue to refuse to collect a blood sample, the officer must immediately notify his/her shift commander. The shift commander will attempt to notify the hospital of their responsibility and the need to cooperate. If the officer still has problems obtaining the blood sample, the officer or a supervisor should contact the hospital supervisor (or administrator) and again demand that the sample be drawn. If any such circumstance as described above occurs, the subject shall be conveyed to a different hospital for the blood draw and the supervisor shall submit a detailed *Department Memorandum* (form PM-9E) through the chain of command so that the issue can be resolved administratively between the department and hospital.
- E. When any subject refuses to submit to chemical tests, the officer must complete the *Notice of Intent to Revoke Operating Privilege Report* (form MV-3396) and give the pink copy to the subject, even if the blood samples were drawn forcibly pursuant to

obtaining a search warrant. Refusals require the *Notice of Intent to Revoke* page 1 and 2 be issued.

Page 1 – Informs the subject that the DOT intends to revoke their driver's license 30 days from date of the refusal.

- There is only one type. This form is required for all refusals.

Page 2 – Informs the subject that they may have a hearing regarding the refusal.

There are two types: city – municipal court and state – circuit court.

Court venue is determined by the type of violation that the refusal arose from. If the OWI charge is a state charge, of any type, the refusal is referred to circuit court. If the OWI charge is a city charge, the refusal is referred to municipal court. The location of refusal hearings are determined by the type of OWI they were arrested for.

1. For city refusals, the officer shall complete a Milwaukee Municipal Court *Request for Refusal Hearing Form* and give it to the subject. On the MV-3396, in the space requesting the "County of Circuit Court Where Arrest Occurred", officers are to write: Milwaukee Municipal Court, 951 N. James Lovell St., Milwaukee, WI 53233.
 2. For state refusals, the officer must complete a Milwaukee County Circuit Court *Notice of Hearing Form*, which is a Milwaukee County DA form, and give a copy to the subject. On the MV-3396, in the space requesting the "County of Circuit Court Where Arrest Occurred", officers are to write: Milwaukee County Circuit Court, 821 W. State St., Milwaukee, WI 53233.
- F. If the subject is an out-of-state refusal, they are processed in the same manner as a WI resident, to include completion of the *Notice of Intent to Revoke Operating Privilege Report*.

Note: Law enforcement no longer has the authority to confiscate the driver's license of an offender for refusing to test or when they have tested with an illegal BAC. This responsibility has now been transferred to the courts.

120.75 SEARCH WARRANTS

- A. The U.S. Supreme Court has ruled that automatic exigent circumstance to justify a warrantless seizure of blood does not exist in all OWI cases. Therefore, officers should either have a warrant or be prepared to explain, for the particular case, why obtaining a warrant is unfeasible. The court's decision does not affect Wisconsin's Implied Consent Law.
- B. Upon making an arrest for OWI, which is based on probable cause, the officer shall ensure the identity of the suspect. The officer shall read the *Informing the Accused* form to the subject pursuant to Wisconsin's Implied Consent Law. If the subject refuses to submit to the primary chemical test (either blood or breath), a search

warrant may be required prior to proceeding with a forced blood draw for OWI violations that are misdemeanor or felony crimes (state cases only). Under these circumstances, the subject shall be conveyed to a hospital while the warrant is being applied for so that when the warrant is signed the blood can be obtained without delay.

Note: Search warrant request shall not be made for OWI violations that are not criminal violations. In order to secure a warrant for a forced blood draw, the OWI violation must be a misdemeanor or felony crime (state cases only). No forced blood draws shall be conducted if the OWI violation is a municipal violation.

- C. Absent any articulable exigent circumstances, the officer shall obtain a search warrant prior to conducting a forced blood draw. Forced blood draws are required for all OWI violations that are misdemeanor or felony crimes.
- D. An officer may conduct a warrantless blood draw only if articulable exigent circumstances exist. If a warrantless blood draw is conducted the officer must articulate precisely what the exigent circumstances were that made obtaining a search warrant unfeasible. Exigency created by an officer's lack of action does not constitute exigency. If an officer had time to obtain a warrant but did not proceed in a timely manner, the exigency is created by the officer and therefore would not be sufficient to justify a warrantless blood draw.
- E. If an officer determines a search warrant may be required, the member shall notify his/her shift commander and advise them of the situation. The field inspector may be consulted if there are questions as to the appropriateness of the request.
- F. If the request to proceed with the warrant is required, the officer shall complete the affidavit and search warrant on a computer.

Note: The search warrant request is titled *OWI Forcible Blood Draw Electronic Fill-In Search Warrant* and is found on the department-wide "R" drive in the forms folder.

- G. As the search warrant is being completed, the shift commander will notify Milwaukee County Sheriff's Department Dispatch (414-278-4788) that there is a request for warrant being prepared. Information will be provided to the shift commander on how to contact the duty judge.
- H. Once contact with the duty judge has been established, the reporting member will speak with the duty judge and they will decide whether to have the affidavit and order:

- 1. Emailed to the duty judge

REDACTED

- 2. Emailed to an alternative email address as a single PDF attachment (file must be

- in PDF format) as provided by the night time duty judge where they will print it out, sign it, scan it, and email it back; or
3. Faxed to a fax number provided by the night time duty judge and provide the duty judge with the fax number to return it to where they will sign it and fax back; or
 4. Personally delivered to the night time duty judge at a location specified by the duty judge for signature.
- I. Prior to submitting the affidavit and order to a judge, it will be reviewed by a supervisor for accuracy and completeness. It is vital that the affidavit and order be signed by the reporting member (affiant) and notarized by a supervisor.
 - J. The warrant need not be in-hand or shown to the subject or the person drawing the blood prior to obtaining the blood sample. All that is required is that the officer has assurance that the warrant was signed by a judge prior to proceeding with the forced blood draw.
 - K. The officer responsible for the search warrant must **REDACTED** **REDACTED** indicating a search warrant was obtained, the date/time the warrant was obtained, the judge and branch of the judge authorizing the warrant, and the officer's name and work location. Court liaison officers will pick-up the original signed search warrant from the judge on the next business day and deliver it and the blood inventory report to the Clerk of Courts, with copies inserted into the defendant's file in the D.A.'s office.

REDACTED

120.80 ABSOLUTE SOBRIETY

- A. Absolute sobriety is the portion of the OWI statute, Wis. Stat. § 346.63(2m) that covers those persons that drive or operate a motor vehicle prior to reaching the legal drinking age of 21. If a person has not attained the legal drinking age of 21, as defined in Wis. Stat. § 125.02(8m), the person may not drive or operate a motor vehicle while he/she has an alcohol concentration of more than .00, but not more than .08.

Note: Absolute sobriety is a misdemeanor offense if a passenger under 16 years of age is in the vehicle.

- B. The mere odor of an alcoholic beverage on his/her breath is sufficient probable cause for conducting SFSTs. The mere odor of an alcoholic beverage on his/her breath is also sufficient probable cause to request that the subject submit to a chemical test of their breath, blood, or urine. If the determination is made to arrest the subject, he/she shall be conveyed to the district station for testing, read the *Informing the Accused*, and then administer the appropriate chemical tests. The subject, as in all OWI related offenses, is required to submit to a chemical test of his/her breath, blood, or urine for the purpose of determining alcohol concentration.

C. In the cases in which the subject has been tested and found to have a BAC of .08 or above, the first offense shall be processed as a city OWI violation, and is a municipal (city) forfeiture. The second or subsequent offenses shall be processed as a state OWI violation. If the BAC results are between .06 and .07, and there is evidence that the subject is sufficiently under the influence to impair his/her driving or operating of a vehicle, the case should then be processed as an OWI case rather than an absolute sobriety case.

D. REQUIRED REPORTS FOR ABSOLUTE SOBRIETY CASES

1. ADR (form PA-45)
2. UTC (form MV 4017) - citation for the violation that was the reasonable suspicion of the traffic stop (recommended).
3. UTC (form MV 4017) - Absolute Sobriety
4. Informing The Accused (form SP4197)
5. OWI Memorandum (form PO-20)
6. Intoximeter Test Record

Note: For absolute sobriety cases which become misdemeanor offenses, add the D.A. reports specified in section 120.125

120.85 JUVENILE OWI

- A. A juvenile, for the purpose of definition, is a subject that has not yet reached the age of 17. Guidelines for the issuance of traffic related citations are the same, as with municipal citations, the juvenile must have reached 12 years of age. If a juvenile has not yet attained the age of 12, all violations regardless of a city or state violation, shall be referred to the Vel Phillips Juvenile Justice Center (VPJJC), 10201 West Watertown Plank Road, Branch 97.
- B. A juvenile that has been arrested for an OWI offense shall be processed in the similar manner as an adult. If it is his/her first violation, and within the guidelines of absolute sobriety, then it should be processed as such. If the BAC is above the guidelines for absolute sobriety, then the case should be handled as an OWI.
- C. As with any other juvenile arrests, the arresting officer(s) must notify the parents or guardian of the arrest and the notification information shall be recorded on the back of the ADR (form PA-45). If the offense is a misdemeanor, and the juvenile is 16 years old or younger, he/she shall be processed and released to a parent or guardian from the district station. If the juvenile is 17 years old, then he/she shall be processed as an adult - released to a parent for the first offense or processed for conveyance to CJF for second and subsequent offenses. If the offense is a felony violation, then the juvenile shall be processed and conveyed to VPJJC.

- D. If the juvenile is 12-15 years of age, all traffic citations relating to city OWI (1st offense) violations shall be referred to municipal court on the next day court is in session at 1:30 p.m. The court date must be at least 24 hours after the arrest. If the juvenile is 12-15 years of age, all traffic citations regarding state OWI (2nd offense and greater or injury related OWI) violations shall be referred to VPJJC, 10201 West Watertown Plank Road, Branch 97.

120.90 COMMERCIAL MOTOR VEHICLE OWI

- A. OWI violations that involve a commercial motor vehicle are handled in the same manner as others, but with some additions. Persons that operate a commercial motor vehicle are required to follow the absolute sobriety statute, Wis. Stat. § 346.63(7)(a) which prohibits operating or driving with an alcohol concentration above .00 and Wis. Stat. § 346.63(5)(a) which prohibits an alcohol concentration of .04 or more, but less than .08. The results of the chemical test will determine which violation has occurred. If the alcohol concentration level is above .00 and below .04, then it is a violation of Wis. Stat. § 346.63(7)(a). If the level is .04 or more and below .08, then it is a violation of Wis. Stat. § 346.63(5)(a). If the alcohol concentration level is .08 and above, then it is a violation of Wis. Stat. § 346.63(1)(b).
- B. Once it has been determined that a violation has occurred, the arresting officer must issue an *Out-of-Service Order* to the subject. This is in addition to the other reports & forms that are given to a subject. If the alcohol concentration level was 0.08 & above, the subject will also be issued the *Notice of Intent to Suspend/Temporary Driving Permit* (form MV3519). The *Out-of-Service Order* is in effect for 24 hours from the time of the violation.
- C. No person may drive, operate, or be on duty time with respect to a commercial motor vehicle under any of the following circumstances:
1. While having any measured alcohol concentration above .00.
 2. Within 4 hours of having consumed or having been under the influence of an intoxicating beverage, regardless of its alcohol content.
 3. While possessing an intoxicating beverage, regardless of its alcohol content, unless the beverage is unopened and is manifested and transported as part of a shipment.

120.95 BOATING RELATED OWI

- A. This section is based on the guidelines set forth by the WI DNR, state statutes, and policies of the MPD. Boating related violations are defined in Wis. Stat. § 30.681 and municipal ordinance 118-80 (1).
- B. Marine Operations Unit officers are trained in detection and enforcement of boating under the influence. Motorboat operators should be administered the “afloat” (seated) battery of tests (HGN, finger to nose, palm pat, hand coordination) by officers trained in the BUI curriculum of the National Association of State Boating Law Administrators

(NASBLA). If no NASBLA-trained officer is available or other circumstances warrant, the “ashore” (standing) battery of tests may be given after the motorboat operator has been onshore for at least 15 minutes.

- C. Officers may use a preliminary breath screening test (PBT) as enumerated in [Wis. Stat. § 30.682](#).
- D. If it has been determined that a subject is possibly under the influence of an intoxicant or controlled substance, or a combination of both, he/she shall be arrested and conveyed to the nearest department facility for testing. Prior to testing or issuing any citations, the arresting officer must check eTime for any prior convictions by checking the box under DNR “License, Registration, Citation.” If the subject has no prior convictions within 5 years, the arrest is handled as a municipal case, and municipal citations (not UTCs) are issued for operating a motorboat while intoxicated, operating a motorboat with an alcohol concentration above .08 (if applicable), and refuse to take test-intoxicated motorboat operation (if applicable). If the subject has had a prior conviction within 5 years, then the current violation must be handled as a criminal violation, and the citations must be issued on the DNR citation forms. The municipal violations are written on the same forms used for municipal operating while intoxicated violation involving an auto. The criminal violations must be written on the listed DNR forms. Commercial motorboat operators, licensed captains, and credentialed merchant mariners violate federal law when they engage in intoxicated boating. In these circumstances, the US Coast Guard should also be notified.
- E. Any and all OWI reports used in conjunction with boating related OWI cases shall be at the sole discretion of the Marine Operations Unit, as established through memorandums of understanding between the city attorney’s office, the district attorney’s office and the United States Coast Guard.

Note: Members who are uncertain as to how to proceed with a boating related OWI should contact a member of the Marine Operations Unit for direction.

- F. FORMS & REPORTS FOR OWI BOATING VIOLATIONS INCLUDED BUT ARE NOT LIMITED TO:
1. DNR - Natural Resources Citation (form 4100-70) [copy to defendant]
 2. DNR - OWI Investigation Field Notes (form 4100-126)
 3. DNR - Intoxicated Operation Incident Report (form 4100-125)
 4. DNR - Constitutional Rights (form 4100-50)
 5. DNR - Agreement to Undertake Responsibility (form 4100-129)
 6. DNR - Checklist and Information Sheet (form 4100-130)
 7. DNR - Request/Consent for Drawing Blood (form 4100-124) [copy to defendant]

8. DNR - Informing The Accused (form 4100-123) [copy to defendant]
9. DNR - Criminal Violation Disposition Record (form 4100-4)
10. Intoximeter Test Record

120.100 ADDITIONAL OWI VIOLATIONS

- A. Wis. Stat. § 350.101 intoxicated snowmobiling - the elements are the same as in the operation of a motor vehicle. The processing of a subject arrested for snowmobiling while intoxicated is the same as in other OWI cases.
- B. Wis. Stat. § 23.33(4)(c) intoxicated operation of an all-terrain vehicle - the elements are the same as in the operation of a motor vehicle. The processing of a subject arrested for operating an all-terrain vehicle while intoxicated is the same as in other OWI cases.
- C. Wis. Stat. § 114.09(1) intoxicated flying – the elements are the same as in the operation of a motor vehicle but apply to aircraft operation while in the air or on the ground or water. The processing of a subject arrested for operating an airplane while intoxicated is the same as in other OWI cases.

120.105 RELEASE OF OWI VIOLATORS (WILEAG 6.2.6)

- A. A subject that was arrested for OWI – first offense - may be released, but only under certain circumstances. The subject may be released to their attorney, spouse, relative, or other responsible adult after completion of the reports and at the discretion of the shift commander. If the subject is released from the custody of the MPD to a citizen, an officer must complete the *Agreement To Undertake Responsibility For Care Of A Person Arrested For Operating A Motor Vehicle While Intoxicated Form* (form SP-4337). This form transfers the responsibility of the intoxicated subject to the citizen that responded to pick them up from the district station or designated location. A subject may not be released on his/her own recognizance until 12 hours have elapsed from the time of arrest or a chemical test for intoxication is conducted and there is an alcohol concentration of less than .04 (Wis. Stat. § 345.24).
(WILEAG 6.2.6.4)
- B. Violators of the absolute sobriety law can be released in situations similar to OWI cases. If the subject is a juvenile, he/she can be released to his/her parents or legal guardian. If the subject is an adult, he/she can be released to any responsible adult. Juveniles must be released from custody as soon as reasonably possible.
(WILEAG 6.2.6.4)
- C. If a subject is released from a district station, the arresting officer shall give the subject an order-in time of 1:30 p.m. regardless of the arresting officer's shift.
- D. If a subject arrested for an OWI offense is hospitalized and going to be admitted for any period of time, the subject may be released from custody at the hospital and ordered to appear at either municipal court for city violations or circuit court for state

violations. Issue the appropriate citation with a future court date using the standard traffic court schedule for 1:30 PM.

120.110 LIAISON OFFICER'S DUTIES

The liaison officer or dayshift court officer is responsible for the following duties:

- A. Collecting and processing the OWI reports and logging them in the official MPD OWI book.
- B. Reviewing the teletype and checking if the subject has any prior OWI violations/convictions, and ensuring that the subject is charged with the appropriate violation. Implied consent (prior refusal) counts as a prior conviction.
- C. Making copies of all OWI reports and ensuring that the *D.A. Witness Subpoena Data Sheet, Referral Packet Checklist from Law Enforcement to Milwaukee County D.A.'s Office* and the *D.A. Complaint Worksheet* are completed. If the case has an outside witness, ensuring that they are listed on the reports.
- D. Pick up of original signed search warrants from the judge on the next business day and deliver them and the blood inventory reports to the Clerk of Courts, with copies inserted into the defendant's file in the D.A.'s office.

120.115 REQUIREMENT OF OFFICERS TO APPEAR

- A. Arresting officers shall appear only for:
 - 1. All state OWI cases where there is an accident involving personal injury to a person other than the defendant.
 - 2. All homicide - OWI related offenses
- B. The liaison officer will present all other OWI violations, including felonies.

Note: In these cases, the arresting officer appears and handles the review by the DA. Prior to appearing, the arresting officer must check in with the state traffic liaison officer. The liaison officer, however, will handle the case to court after the charge is issued. Arresting officers need not appear for other OWI arrests.

120.120 CITY CASES

- A. If the subject has no prior convictions for any of the alcohol related violations, Wis. Stat. § 346.63, 940.09, 949.25, or 343.305 (Implied Consent Law), then the case should be processed as a city case. Out of state convictions are to be counted as prior convictions. If the subject does not have any prior convictions for any of the alcohol related violations in WI within the previous ten (10) years, and no more than one prior conviction since January 1, 1989, these cases should be processed as city cases. Do not count incidents that were "vacated" (VAC) or "court released" (CR) as a previous

charge or case. If the current case involved causing injury, great bodily harm, or death it cannot be considered a city case, regardless if the subject has no prior convictions.

- B. The day shift court officer in municipal court will handle city cases. If the subject is in custody, was released, or posted bail, he or she must appear in court at 1:30 p.m. during the next session of court that occurs at least 24 hours after the arrest – regardless of the test type (e.g., breath, blood, or urine). No released subjects are to be ordered in on Saturdays, Sundays, or holidays.
- C. If the subject's test results are .08 or more (non-commercial motorized vehicle) or .01 or more (commercial motorized vehicle) on the intoximeter, a second citation must be completed for operating/driving with a prohibited alcohol concentration. If the subject submitted to a blood or urine test, the day shift court officer will issue the second citation upon receipt of the test results.
- D. If the subject is hospitalized as a result of an accident, other injury, or other medical condition the subject may be released from custody and given a future court date to appear after being released from the hospital. The future court date from the monthly court schedule is to be used for these circumstances, with a time of 1:30 pm.

Note: If this is a first offense OWI and the driver had a minor passenger under the age of 16 in the vehicle at the time of the violation, the offense is a state charge (misdemeanor).

- E. Forced blood draws shall not be conducted for any city OWI violations.
- F. The following reports are required to be completed and included in the OWI package envelope:
 - 1. OWI Package Envelope (form PO-25)
 - 2. UTC OWI (form MV 4017)
 - 3. Informing The Accused (form SP4197)
 - 4. Three (3) copies of the Intoximeter BAC Report
 - 5. UTC BAC (form MV 4017)
 - 6. OWI Memorandum (form PO-20)
 - 7. ADR (form PA-45)
 - 8. WI Probable Cause Statement (form CR-215) (if any state charges are involved)
 - 9. TraCS crash report (if an accident occurred)
 - 10. Driving record of defendant

Note: Additional reports may be required, but those would be based on whether the case is a blood, urine, combination of two tests, or a refusal.

120.125 STATE CASES

- A. If the subject has a prior conviction for any of the alcohol related driving violations within ten (10) years from the date of the refusal or violations which resulted in the revocations or convictions, or more than one prior conviction since January 1, 1989, the case is to be processed as a state violation. Out of state convictions are to be counted. Do not count incidents that were “vacated” or “court released” as a previous conviction. Cases that involve causing injury, great bodily harm, or death are always handled as state cases.
- B. The dayshift court officer will handle state cases (with the exception of causing injury or homicide). If the subject is in custody, he or she will appear in court at 1:30 p.m. of the next court session. If the subject has posted bail (from CJF only), he or she must appear in court at 1:30 p.m. of the next court session. These subjects are ordered to appear at the Safety Building – room 221 (Out of Custody - Intake Court) prior to the scheduled court time.
- C. If the subject tests above the prohibited blood alcohol concentration level on the intoximeter, he or she will be issued a second citation for operating/driving with a prohibited alcohol concentration. If the subject submitted to a blood or urine test, the dayshift court officer or liaison will issue the second citation upon receipt of the test results.
- D. If the subject is hospitalized as a result of an accident, other injury, or other medical condition he or she may be released from custody and given a future date to appear after being released from the hospital. The future court date should be obtained from the court schedule, with a time of 1:30 pm, as blood results could take up to 30 days.

Note: If this is the third OWI offense or greater, the presence of a minor passenger under the age of 16 in the vehicle at the time of the offense elevates the current offense to a felony.

- E. In addition to those reports needed in section 120.110, the following reports also must be completed:
 - 1. Referral Packet Checklist From Law Enforcement to Milwaukee County D.A.’s Office (D.A. form 900)
 - 2. D.A. Complaint Worksheet (D.A. form 800)
 - 3. D.A. Witness Subpoena Data Sheet (D.A. form 4983) (2 copies)
 - 4. D.A. Criminal Case Scheduling Calendar (D.A. form 3074 R22)

Note: Additional reports may be required, but those would be based on the

whether the case is a blood, urine, combination of two tests, or a refusal.

120.130 REPORTS CHECKLIST

The following is a list of reports that are used in OWI related offenses, but not all are used in each circumstance. Different reports are required in different cases. In the event of felony cases that involved an injury or death, an incident number must also be generated and used in addition to the uniform traffic citation.

- A. OWI Envelope (form PO-25)
- B. Uniform Traffic Citation OWI (form MV 4017) [pink copy to defendant]
- C. Uniform Traffic Citation BAC (form MV 4017) [pink copy to defendant]
- D. Informing the Accused (form SP4197) [pink copy to defendant]
- E. Intoximeter Test Record (individually generated by the Intoximeter EC/IR) [page 3 to defendant]
- F. Administrative Review Request (form MV3530) [yellow copy to defendant]
- G. Notice of Intent to Suspend/Temporary Driving Permit (form MV3519) [pink copy to defendant]
- H. Notice of Intent to Revoke Operating Privilege – Page 1 (form MV3396) [pink copy to defendant]
- I. Notice of Hearing– Page 2 (state) [copy of completed form to defendant - this is not a carbon copy form]
- J. Request for Refusal Hearing (city) [copy to defendant]
- K. Blood / Urine Analysis (form CS-22)
- L. Property Inventory (form PP-32) or copy of Officer Drop printout
- M. Arrest Detention Report (form PA-45)
- N. WI Probable Cause Statement (form CR-215)
- O. OWI Memorandum (form PO-20)
- P. Agreement to Undertake Responsibility for Care of a Person Arrested for Operating a Motor Vehicle While Intoxicated (form SP 4337) [pink copy to person taking custody of defendant]
- Q. TraCS Crash Report

- R. Classified License Receipt (24-Hour Out-of Service) (form MV3558) [pink copy to defendant]
- S. 24-Hour Out Of Service Order (form MV3546) [pink copy to defendant]
- T. Referral Packet Checklist from Law Enforcement to Milwaukee County D.A's Office (D.A. form 900)
- U. D.A. Complaint Worksheet (D.A. form 800)
- V. D.A. Witness Subpoena Data Sheet (2 copies) (D.A. form 4983)
- W. D.A. Criminal Case Scheduling Calendar (D.A. form 3074 R22)
- X. Letters of Transmittal
- Y. RMS Report
- Z. Affidavit and Search Warrant



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